



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/615,683	07/14/2000	James A. Stockman	4554/87215	6981

22910 7590 02/14/2002

BANNER & WITCOFF, LTD.
28 STATE STREET
28th FLOOR
BOSTON, MA 02109

EXAMINER

VIDOVICH, GREGORY M

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 02/14/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

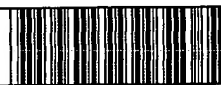
Application No.
09/615,683

Applicant(s)

Stockman

Examiner
Gregory Vidovich

Art Unit
3727



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Nov 27, 2001
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on Jul 14, 2000 is/are objected to by the Examiner.
- 11) ☒ The proposed drawing correction filed on Nov 27, 2001 is: a) ☐ approved b) ☒ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
- 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other:

Art Unit: 3727

DETAILED ACTION

Drawings

1. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on November 27, 2001 have been disapproved because they introduce new matter into the drawings. 37 CFR 1.121(a)(6) states that no amendment may introduce new matter into the disclosure of an application. The original disclosure clearly does not support the showing of the structure of elements 12 and 13 as proposed in new figures 5 and 6. Proposed figure 4 corrections have not been entered in order to reduce the likelihood of confusion. It is further noted that applicant did not provide amendments to the specification to describe figures 5 and 6.

2. The drawings as originally filed remain objected to because:

- a) figures 1 and 2 include lead lines with no reference characters;
- b) the upper grooves in elements 4 and 4a in figures 3 and 4 are not shown in figure 2;
- c) it is unclear as to what applicant intends as the latch 12, 13 and as to how this latch performs;
- d) the reference characters in figure 4 are too small and not readily legible; and
- e) the list of chair parts in figure 4 includes markings which should be corrected (it is noted that this list of elements preferably should be deleted). Correction is required.

It is noted that applicant made an attempt to correct the informalities set forth in d and e above, but applicant deferred correction of the informalities in a, b, and c until formal drawings are

Art Unit: 3727

required. Applicant's failure to submit drawing corrections in the applicant's next response will result in an deliberate non-responsive amendment. The application can not be allowed until review of the drawing corrections by the examiner to determine the possible entry of new matter.

Specification

3. The disclosure remains objected to because of the following informality

a) it is unclear as to how the latch 12, 13 operates. Applicant provides no disclosure to this feature and the drawings do not show any detail which would allow an ordinary artisan to properly understand how this latch works. Appropriate correction is required.

Claim Rejections - 35 U.S.C. § 112

4. Claims 1-23 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Regarding claim 1, as discussed above, the latch, which, by disclosure, is part of the "locking assembly" is vaguely described rendering an ordinary artisan to speculate as to how this latch operates and performs. Accordingly, the latch, which is part of the locking assembly, is subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. See also claims 6 and 13. Applicant asserts in the response that a "latch" is not recited in claim 1.

Art Unit: 3727

Although not specifically recited, by disclosure, it is quite clear that the “locking assembly” would inherently require the latch else it would be unclear as to how the assembly may possible lock as required in the claim. If applicant continues this argument in a future response, the examiner may further present rejections under 35 U.S.C. 112, first paragraph, under lack of enablement since one having ordinary skill in the art would know how to make the claimed locking assembly to “lock” the apparatus in the position as claimed absent the latching mechanism.

5. Claims 18, 22 and 23 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Regarding claim 18, the strap merely being attached only to the sub frame is subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. A narrow written disclosure will limit claim breadth. The claims may be no broader than the supporting disclosure. The strap, by disclosure, is attached to both the frame and the subframe. Applicant’s attempt to broaden this connection after filing of the application clearly raises new matter.

Regarding claim 22, the cushion being attached merely by “side release buckles” is subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession

Art Unit: 3727

of the claimed invention. At page 7, lines 1-3 of applicant's disclosure, applicant clearly states that the cushion is connected via a nylon strap with plastic snaps which is clearly different than merely claiming "side release buckles" which is a significant departure from the scope of the originally filed application.

Regarding claim 23, the male and female locking braces are subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

6. Claims 1-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, as discussed above, the operation of the locking assembly is unclear rendering the claim indefinite. See also claims 6 and 13. Furthermore, in light of applicant's arguments in traversal of the first paragraph rejection, applicant states that the "latch" is not recited in the claim. If the latch is not inherently intended to be part of the broadly claimed "locking assembly," it is unclear as to how the device would possibly "lock" as required by the claim. This rejection is raised by applicant's arguments and is not considered a new grounds of rejection.

Regarding claim 18, it is unclear as to how the strap can operate as a sway brace if attached only to the subframe.

Applicant is respectfully requested to thoroughly review all the claim for similar informalities and to correct any informalities of which applicant may become aware in the claims.

Art Unit: 3727

Claim Rejections - 35 U.S.C. § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1, 2, 4, 5, 6, 9, 10, 12, 19, and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Black.

Regarding claim 1, the Black reference discloses a backpack and chair apparatus comprising a pack (7), frame (4, 6) which clearly provides rigid structure and back support when in the backpack mode as well as rigid structure and back support in the chair mode (see lead line 6 which broadly defines a back support very similar to applicant's invention), straps (25), sub-frame (10, 11), and a locking assembly (20-24) as claimed.

Regarding claim 2, see figures 1 and 5.

Regarding claim 4, see lead line 16 which is a seat cushion which performs as claimed (see figures 1 and 5). Flaccid material inherently provides, at least to a certain extent, cushioning properties. This is well known. Applicant's claim provides no more structure than that provided in Black. In the event applicant states that the cushion includes a pad associated therewith, these claims will be properly rejected similar to that in claim 17 hereinafter.

Regarding claim 5, the cushion is "removably" attached to the sub-frame if so desired. Applicant provides no means in the claim for removing the cushion which structurally differs from

Art Unit: 3727

the structure set forth in the Black reference whereby the cushion is clearly capable of being physically removed if so desired.

Regarding claim 19, the Black device further includes a seat braces (see members extending transversely from the lower ends of elements 4 and 5) operative as stabilizers to prevent the chair from collapsing forward (absent any directional perspective described by applicant in the claim, forward is to the left in figure 3).

Regarding claim 23, as best understood, see lead lines 9, 18, 19 (female apertures) and 17 (male pin).

Claim Rejections - 35 U.S.C. § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 3, 11, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Black in view of MacLean ('064).

Regarding claim 3, although it is unclear if the pack is removable from the frame, attention is directed to the MacLean reference which discloses this well known feature (see column 4, lines 40-45; see also last four lines of the Abstract in MacLean). It would have been obvious, if not already to removably attach the pack in Black to the frame as, for example, illustrated in MacLean in order to increase utility of the pack by use without the frame if so desired.

Art Unit: 3727

Regarding claim 20, in as much structure claimed and disclosed by applicant, the attachment of the pack to the frame of the Black device as modified above is by means of a plurality of "turnbuckles."

11. Claims 7, 8, 13, 14, 16, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Black in view of Fisher.

Regarding claim 7, although the locking assembly does not include a jointed arm, attention is directed to the Fisher reference which discloses another chair having a sub-frame (6) and locking assembly (see lead lines 14, 16) which is a jointed swing arm (see figure 1) which includes a member (16) removably attachable to a frame (1) to lock the frame, sub-frame, and locking assembly in place to stabilize the chair. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a swing arm in connection with the element 3 in Black as, for example, illustrated in Fisher in order to more rigidly stabilize the chair when in the chair mode.

Regarding claim 14, the locking assembly comprises a plurality of jointed swing arm (see elements 20 and 21 in Black in combination with element 16 in Fisher). Alternatively, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a second swing arm in connection with the leg assemblies in Black in order to enhance stability.

Regarding claim 23, as best understood, see lead lines 9, 18, 19 (female apertures) and 17 (male pin) in Black.

12. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Black in view of Fisher as applied above and further in view of MacLean ('064).

Art Unit: 3727

Regarding claim 15, although it is unclear if the pack is removable from the frame, attention is directed to the MacLean reference as discussed above. It would have been obvious, if not already to removably attach the pack in Black to the frame as, for example, illustrated in MacLean in order to increase utility of the pack by use without the frame if so desired..

13. Claims 17 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Black in view of Fisher as applied above and further in view of Gatling.

Regarding claim 17, although the cushion in Black does not include a pad removable therefrom, attention is directed to the Gatling reference which discloses another cushion having foam provided within a shell of canvas material (see column 2, lines 30 et seq.). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the cushion in Black to have a foam filling as, for example, disclosed in Gatling in order to provide additional comfort to the user. Although it is unclear if the cushion in Black as modified above includes a zipper, the examiner takes Official Notice that it is very well known to provide a zipper on a cushion to provide easy access means to replace the interior padding. One very common example is sofa cushions. It further would have been obvious to provide a zipper on the cushion of Black as modified above in order to provide easy access to replace the padding when needed.

Regarding claim 21, although the pad in Black as modified above does not include the pad to be wedge shaped, it would have been an obvious matter of design choice to form the pad in a wedge shape, since applicant's specification is silent that this particular claimed feature solves any

Art Unit: 3727

problems or is for any particular purpose and it would appear that a rectangular shaped pad would perform equally as well on the Black device as modified above.

Regarding claim 22, as best understood, the zippers as discussed above provide "side release buckles" wherein each of the opposing interlocking teeth provide a "buckle" as broadly claimed.

14. It is noted that claim 18 has not been rejected based on prior art. However, in light of the 35 U.S.C. 112, first and second paragraphs, informalities as discussed above, the examiner can not indicate this claim to have allowable subject matter until clarification from applicant. It is noted that clarification may result in a new issue which would require further search and consideration by the examiner.

Response to Arguments

15. Applicant's arguments filed November 27, 2001 have been fully considered but they are not persuasive and are further moot in view of the new grounds of rejection necessitated by applicant's amendments.

Regarding the rejections under 35 U.S.C. 112, first and second paragraphs, the examiner has clearly addressed these rejections above and no further discussion is deemed necessary.

Regarding applicant's arguments with respect to Black, Black clearly includes a back support in the chair mode as is clearly seen in figure 1 of the Black reference.

Regarding applicant's arguments with respect to claim 4, these arguments have been clearly addressed above and no further discussion is deemed necessary.

Art Unit: 3727

Regarding applicant's argument with respect to claim 3, it is unclear as to applicant's argument as to the lack of motivation since this feature is clearly suggested in MacLean and it would appear that applicant's argument is without merit.

Regarding applicant's argument with respect to claim 7 that the relied upon reference is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Fisher is clearly a collapsible chair as is the Black device and it is unclear as to applicant's argument as lacking motivation since the respective chairs are very similar.

Regarding the remaining rejections, again applicant argues lack of motivation in light of non-analogous art. Each of the rejections have been clearly outlined above with clear motivation to combine. Applicant's mere argument that the combined references are non-analogous art without specifically directing the examiner to a specific reason why the references are not properly combinable clearly is not sufficient in light of the clear teachings in each of relied upon references.


16. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the

Art Unit: 3727

mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory Vidovich whose telephone number is (703) 308-1513.


Gregory Vidovich
Primary Examiner
Art Unit 3727
February 10, 2002

Attachment for PTO-948 (Rev. 03/01, or earlier)
6/18/01

The below text replaces the pre-printed text under the heading, "Information on How to Effect Drawing Changes," on the back of the PTO-948 (Rev. 03/01, or earlier) form.

INFORMATION ON HOW TO EFFECT DRAWING CHANGES

1. Correction of Informalities -- 37 CFR 1.85

New corrected drawings must be filed with the changes incorporated therein. Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and centered within the top margin. If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings **MUST** be filed within the **THREE MONTH** shortened statutory period set for reply in the Notice of Allowability. Extensions of time may **NOT** be obtained under the provisions of 37 CFR 1.136(a) or (b) for filing the corrected drawings after the mailing of a Notice of Allowability. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

2. Corrections other than Informalities Noted by Draftsperson on form PTO-948.

All changes to the drawings, other than informalities noted by the Draftsperson, **MUST** be made in the same manner as above except that, normally, a highlighted (preferably red ink) sketch of the changes to be incorporated into the new drawings **MUST** be approved by the examiner before the application will be allowed. No changes will be permitted to be made other than correction of informalities, unless the examiner has approved the proposed changes.

Timing of Corrections

Applicant is required to submit the drawing corrections within the time period set in the attached Office communication. See 37 CFR 1.85(a).

Failure to take corrective action within the set period will result in ABANDONMENT of the application.